

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JEROME TALLEY,

Plaintiff,

V.

WILLIAM HOUSER,

Defendant.

No. C15-5712 RBL-KLS

## **REPORT AND RECOMMENDATION**

Plaintiff Jerome Talley, a pretrial detainee being held at Kitsap County Jail, filed an application to proceed *in forma pauperis* (IFP) in this civil rights action on October 2, 2015. Dkt. 1. Plaintiff has over ten §1983 cases currently pending before this Court. On September 24, 2015, Senior District Judge Lonny R. Suko entered an order denying Plaintiff's application to proceed IFP in *Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash) because Plaintiff incurred at least three "strikes" prior to initiating the lawsuit. Judge Suko also denied the applications to proceed IFP in *Talley v. Congalton, et al.*, 3:15-cv-5534-LRS (W.D. Wash) and *Talley v. Creatura*, 3:15-cv-5585-LRS (W.D. Wash) because Plaintiff has incurred at least three "strikes."

Concurring with Judge Suoko, this Court finds Plaintiff incurred the following “strikes” prior to filing this lawsuit: *Talley v. Holevinski* (E.D. Wash Case No. 02:99-cv-5036); *Talley v. Bailey, et al.* (W.D. Wash Case No. 2:08-cv-00677-TSZ); *Talley v. Bailey, et al. (II)* (W.D. Wash

1 Case No. 2:08-cv-00752-RSM); and *Talley v. Rogers* (W.D. Wash Case No. 2:08-cv-01761-  
 2 TSZ). *See also Talley v. Sias, et al.*, 3:15-cv-5501-LRS (W.D. Wash)<sup>1</sup>.

3 **DISCUSSION**

4 Because Plaintiff has incurred at least three strikes, he may not proceed IFP unless he can  
 5 show he is “under imminent danger of serious physical injury.” 28 U.S.C. § 1915(g). The  
 6 imminent danger exception requires a prisoner allege a danger which is “ready to take place” or  
 7 “hanging threateningly over one’s head.” *Andrews v. Cervantes*, 493 F.3d 1047, 1056 (9th Cir.  
 8 2007). In this case, Plaintiff sues a Washington Superior Court Judge, alleging that the judge  
 9 denied him his day in court. Dkt. 1.

10 Plaintiff does not allege danger of any physical injury, much less an imminent serious  
 11 physical danger which is “ready to take place” or “hanging threateningly over [his] head.”  
 12 *Cervantes*, 493 F.3d at 1056. Therefore, the imminent danger exception does not apply in this  
 13 case, and Plaintiff is subject to the three-strikes rule.

14 **CONCLUSION**

15 The Court recommends Plaintiff’s Motion to Proceed IFP (Dkt. 1) be denied as Plaintiff  
 16 has incurred at least three strikes under 42 U.S.C. § 1915(g). The Court further recommends  
 17 Plaintiff be ordered to pay the \$400.00 filing fee within thirty days of the District Court’s order  
 18 and, if the fee is not paid, dismiss this case without prejudice.

19 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal Rules of Civil  
 20 Procedure, the parties shall have fourteen (14) days from service of this Report to file written  
 21 objections. *See also Fed. R. Civ. P. 6*. Failure to file objections will result in a waiver of those  
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 26<sup>1</sup> This court may take notice of judicial proceedings in another court. *See U.S. ex rel. Robinson Rancheria  
 Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248 (9th Cir. 1992).

1 objections for purposes of appeal. *Thomas v Arn*, 474 U.S. 140 (1985). Accommodating the time  
2 limit imposed by Rule 72(b), the Clerk is directed to set the matter for consideration on **October**  
3 **23, 2015**, as noted in the caption.

4 DATED this 7<sup>th</sup> day of October, 2015.

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8 Karen L. Strombom  
9 United States Magistrate Judge  
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